

SERVED: November 27, 1992

NTSB Order No. EA-3748

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of November, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12801
v.)	
)	
BARRY DEAN TURNER,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Patrick G. Geraghty issued in this proceeding on October 16, 1992, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator revoking respondent's

¹An excerpt from the hearing transcript containing the initial decision is attached.

private pilot certificate for his alleged violation of section 61.59(a)(2) of the Federal Aviation Regulations, 14 CFR Part 61.²

As we find, for the reasons discussed below, no error in the law judge's affirmation of the revocation order, the appeal will be denied.³

The record establishes that a pilot logbook the respondent had submitted to the FAA, in connection with its investigation of a June, 1992 incident unrelated to this case, was shown to contain several false entries relating to the dates on which instructor endorsements had been made to show compliance with the flight review requirements. Specifically, entries and endorsements concerning a 1981 flight review had been altered to reflect that they had been given in 1989. Although respondent denies altering the dates and argues that he had no reason to do so, the law judge did not credit respondent's denial, and he concluded, in addition, that respondent did have an inducement to change the entries. In this regard, the law judge noted that a

²FAR section 61.59(a)(2) provides as follows:

"§61.59 **Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made--

* * * * *

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance, or exercise of the privileges, or [sic] any certificate or rating under this part...."

³The Administrator has filed a reply opposing the appeal.

logbook entry made after the altered ones raised "a reasonable inference" (I.D. at 64) that the respondent had operated as pilot-in-command a flight in September, 1990, when he had not had a biennial flight review in the preceding 24 months pursuant to FAR section 61.56.⁴ We need look no further than this showing to conclude that the admittedly false entries in respondent's logbook were material, contrary to respondent's position on appeal.⁵ Moreover, the false entries themselves provide strong circumstantial evidence that respondent intended to deceive the FAA as to his airman currency in September, 1990 by tendering a logbook that did not contain accurate information. In sum, we think there was adequate evidentiary support for the law judge to

⁴We think the logbook creates more than just a reasonable inference that respondent was pilot-in-command of the September 16, 1990 flight, for while he made no entry in the "Dual" or "Solo" columns for the operation, under the "Classification" heading he listed the flight as 10.4 hours of "SXC," which, in context, clearly stands for solo cross country. Respondent had logged 6.4 hours Dual for a flight made on September 4, 1990. Adm. Exh. A. 2. Although the respondent passed a biennial flight review in October, 1990, that review would not serve to legitimate a flight made in the preceding month.

⁵We would view the false entries as to when respondent had been given a flight review as material even if they had no bearing on the lawfulness of the September 1990 flight. The regulation prohibiting logbook falsifications applies to entries that are or may be "used" to show compliance with "any requirement for the issuance, or exercise of the privileges, [of] any certificate or rating," not just to those entries that are needed to demonstrate compliance. See, generally, Administrator v. Cassis, 4 NTSB 555, 557 (1982) ("The maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability and accuracy of the records and documents maintained and presented to demonstrate compliance."), aff'd, Cassis v. Helms, 737 F.2d 545 (6th Cir. 1984).

find that the entries were intentionally false within the meaning of section 61.59.

Respondent's disagreements with the initial decision for the most part ignore the law judge's credibility assessment against him and, arguably, against one of his witnesses as well,⁶ and they provide no basis for concluding that the law judge's resolution of the credibility issues should be overturned as arbitrary, clearly erroneous or otherwise not supported in the record. In the absence of such a showing, and finding in respondent's appeal no other ground on which the initial decision should be disturbed,⁷ we will adopt as our own the findings and conclusions of the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The emergency order of revocation and the initial decision are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶The law judge appears to have rejected as a matter of credibility the testimony of the witness for respondent who stated that he had been pilot-in-command of the September, 1990 flight that the respondent had not logged as either dual or solo time.

⁷The law judge correctly ruled that a motion to dismiss as stale the charge in the complaint could not be granted because falsification cases present an issue as to the airman's qualification to hold a certificate.